

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 48 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 55 OF 2016

Shankar Popat Jagtap

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Abhijeet Desai a/w Ms. Vrushali Maindad for the applicant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JANUARY 29, 2016.

PC :

Not on board. Upon production, taken on board.

Heard. This is an application seeking suspension of substantive sentence imposed upon the applicant. Applicant herein was convicted for offence punishable under section, 279, 304 (A) of Indian Penal Code by Judicial Magistrate First Class, Karad in S.C.C. No. 2175 of 2003 vide Judgment and Order dated 24/12/2008. Applicant was sentenced to suffer rigorous imprisonment for 2 years and fine of Rs. 5,000/- in default to suffer simple imprisonment for 3 months.

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2) Being aggrieved by the said Judgment and Order applicant herein had filed criminal appeal no. 2 of 2009 before Sessions Court at Karad. Learned Sessions Judge, Karad vide Judgment and Order dated 20/01/2016 has been pleased to dismiss the appeal. Applicant was taken into custody on 20/01/2016 and he continues to remain in custody.

3) Learned counsel for the applicant submits that applicant was on bail during the pendency of trial as well as during the pendency of appeal and has not committed breach of any conditions imposed upon him. Learned counsel further submits that in fact it is a case of an accident and it cannot be said that the prosecution has proved the guilt of the accused beyond reasonable doubt. It appears from the judgment of the Sessions Court that learned Sessions Court has taken into consideration the admission of the applicant at the stage of recording of statement u/s 313 of Code of Criminal Procedure, 1973 wherein it is considered that applicant was driving the vehicle at the relevant time and that too at high speed. Learned counsel further submits that statement cannot be taken into consideration as it is incumbent upon the prosecution to prove the guilt of the accused beyond reasonable doubt.

4) In any case, revision application has been admitted and hence, applicant

deserves to be enlarged on bail during the pendency of revision application.

Hence, following order.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicant is hereby suspended and he be enlarged on same bail, fresh bonds.
- (iii) Applicant shall report to the court of Judicial Magistrate First Class, Karad, once in six months, as directed by the concerned court, till the decision of revision application.
- (iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.
- (v) Application stands disposed of.
- (vi) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)